

procedures to enable AT&T to do so are exactly the same as SBC will use for itself or the data CLECs -- is a blatant violation of Sections 201 and 251 of the Communications Act and precludes a finding that SBC has met the competitive checklist or that SBC's entry into the Texas long distance market is in the public interest.

9. SBC's supplemental filing⁶ does nothing to alleviate any of the deficiencies that characterized its previous application for Texas. See Initial Pfau/Chambers Decl. ¶¶ 13-47. Indeed, the sad truth is that the central facts about xDSL in Texas remain unchanged since SBC's initial filing. If anything, SBC's intransigence has grown, as it continues to discriminate against CLECs that are attempting to offer xDSL services. While SBC's own retail xDSL operations are enjoying rapid and accelerating growth, its support for would-be xDSL competitors remains inadequate in some areas and nonexistent in others. These pervasive problems are of such magnitude and consequence as to preclude -- independent of SBC's performance deficiencies in other areas -- any affirmative determination that SBC has complied with items 2 and 4 of the competitive checklist.

10. The most competitively significant and obvious xDSL-related violations of the competitive checklist are those associated with SBC's refusal to cooperate with CLECs who seek to add xDSL capabilities to the combination of network elements known as UNE-P. These violations are the most competitively significant because, even though xDSL is certainly important as a standalone service, particularly for some business customers, the greater public policy concern is that SBC is exploiting the growing consumer demand for high-speed data services over existing voice lines to undermine competition for such services throughout the residential market. In particular, it is increasingly apparent that a CLEC's ability to offer xDSL service has a powerful effect on its ability competitively to provide residential customers voice services and "bundles" of services. Even if SBC could fix its recurrent problems in provisioning stand-alone xDSL-capable loops *and* properly implement the requirements for line-sharing with

⁶ See Letter from James D. Ellis et. al., counsel for SBC Communications Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission (Apr. 5, 2000) ("SBC Letter Br.").

data-only CLECs, that would do *nothing* to address the key issue: SBC is aggressively pursuing a strategy calculated to ensure that SBC -- and no one else -- can offer "all the pieces" that consumers want.⁷ Instead of "one-stop shopping," the result will be one shop stopping the competition that could otherwise occur in Texas.

11. These are not idle concerns. Through its \$6 billion Project Pronto initiative, SBC is rapidly deploying advanced services capabilities for millions of residential consumers. As noted in AT&T's initial comments, SBC had, by the beginning of this year, acquired 169,000 customers region-wide and predicted that it would make xDSL available to over 61 million customers throughout its region by the end of 2002.⁸

12. Since its initial filing, SBC has quickened the pace. Last month, Chairman Edward Whitacre stated that SBC's plans are ahead of schedule, that its xDSL subscriber levels would reach one million region-wide by year end, and that it plans to make xDSL available to 77 million customers by year end 2002.⁹ In stark contrast to these numbers, SBC claims as proof of CLECs' ability to compete the fact that, since last August, CLECs have managed to install roughly 5,000 xDSL-capable lines in Texas.¹⁰ The combination of SBC's breakneck retail deployment of such capabilities with its intransigence in providing necessary and legally required wholesale inputs for advanced services to competitors attempting to offer a competitive bundle of voice and data services will ensure that SBC perpetuates its existing monopoly over local voice service and extends that monopoly into the provision of bundled services as well. If SBC is granted authority to provide long distance service, the "last piece" of the bundle will be in place for SBC alone, and Congress' objective of injecting competition into the Texas market will be frustrated.

13. At the outset, it is important to distinguish among three distinct competitive

⁷ SBC Communications, Inc., "SBC Launches \$6 Billion Broadband Initiative," SBC News Release at 4 (Oct. 18, 1999) ("SBC Pronto Press Release") (quoting SBC Chairman Edward E. Whitacre, Jr.), attached hereto as Attachment 1.

⁸ Initial Pfau/Chambers Decl. ¶ 13.

⁹ See "SBC Becomes America's Largest Single Broadband Provider With \$6 Billion Initiative" (visited Apr. 24, 2000) <http://www.sbc.com/Technology/data_strategy/project_pronto/Home.html> ("Pronto Home Page"), attached hereto as Attachment 2.

¹⁰ See SBC Letter Br. at 11.

xDSL-related strategies, all of which are covered by Sections 251 and 271. First, there is the use of stand-alone, or “second,” loops by carriers that want to provide data service only. For the most part, this is economically viable only in portions of the business market. Second, there is the use of the customer’s existing loop by data CLECs who seek to provide data but not voice service. This is called “line sharing” and is discussed to some extent in SBC’s new application, even though SBC claims (erroneously) that its application cannot be judged against the standards of the Line Sharing Order because that Order was not effective as of the date of the new application.¹¹ Third, there is the use of the customer’s existing loop by a CLEC to provide (either by itself or in conjunction with a cooperating carrier), both voice and data service.

14. The revised application makes no effort to demonstrate how SBC provides nondiscriminatory access to CLECs for loops and other elements that will enable them to provide both voice and data service in competition with SBC. This is AT&T’s principal concern and the issue of greatest competitive significance to the residential market. In fact, the new application continues SBC’s full-blown retreat from its prior explicit representation to this Commission that AT&T is “free to offer both voice and data over the UNE Platform.”¹²

15. This is, of course, nothing new. For quite some time, SBC effectively delayed new entrants by (i) taking and clinging to anticompetitive legal positions regarding UNE-P, and (ii) raising unnecessary operational and systems barriers to the provision of voice service.¹³ Now, the advent of demand for high-speed data services has created new ways for SBC to hinder competition. Not surprisingly, SBC has seized on this opportunity, not merely to extend its monopoly in data services, but also to strengthen its monopoly in voice services.

16. As a result, SBC has effectively secured for itself a position in which it is the only carrier that can easily and cost-effectively provide voice and data services over the same line. When it obtains approval of a Section 271 application, SBC will be able to offer long distance,

¹¹ See SBC Letter Br. at 15; Auinbauh Supp. Aff. ¶ 3.

¹² SBC Reply Brief at 37 n.19.

¹³ As discussed in the brief that this declaration accompanies, certain serious impediments -- particularly inadequate hot cuts and unlawful glue charges -- still remain a problem in Texas.

the other critical piece of the bundle. If SBC is not required to provide UNE-P CLECs with access to the data portion of the loops they purchase, *no other carrier will have comparable opportunities to provide such a combined package to consumers.*¹⁴ The inevitable result will be to jeopardize the competition that has begun to emerge.

17. From the time the issue first arose last September, AT&T has regularly and repeatedly raised its concerns with the Texas Public Utility Commission ("TPUC"), as discussed in detail in AT&T's opposition to SBC's initial Texas application.¹⁵ Three months later, the TPUC has not even initiated -- much less completed -- any effort to devise a solution.

18. In the meantime, SBC appears intent on requiring AT&T to use a second line to provide voice and data services, rather than enable AT&T to use the line it has already purchased as part of the UNE-Platform. This is no "solution" to anything. For most customers, especially in the residential market, this proposal is inconvenient, inefficient, and uneconomic. The Commission expressly acknowledged this in its Line Sharing Order, and SBC admits as much in its supplemental application, as is explained below.¹⁶ SBC, however, has refused (i) to permit AT&T access to the architecture it already provides to its separate affiliate and will be offering to data-only CLECs, (ii) to agree to other arrangements that permit AT&T to provide voice and data services over the same loop in a nondiscriminatory manner relative to itself, and (iii) to cooperate in negotiating ancillary administrative processes.

19. Allowing SBC to provide long distance service while it continues to discriminate in this fashion would be unlawful and competitively devastating in Texas. If a single loop can be efficiently shared when SBC provides voice services and its affiliate provides data services or when SBC provides voice services and a data-only CLEC provides data services, the same efficiency must be available to a UNE-P carrier that wishes to provide both voice and data

¹⁴ AT&T has previously demonstrated its commitment to provide residential competition using its own facilities whenever possible. Initial Tonge/Rutan Decl. ¶¶ 14-19; Initial Pfau/Chambers Decl. ¶ 17. At present, however, neither cable nor wireless alternatives enable AT&T to provide voice, data, and long distance services on anything close to a ubiquitous basis. *Id.*

¹⁵ Initial Pfau/Chambers Decl. ¶¶ 31 & nn.29-31. AT&T has also raised this issue in state and regional collaboratives and in the negotiation of interconnection agreements in Texas and California.

¹⁶ See ¶¶ 33-36 *infra*.

services. SBC's unlawful and discriminatory foreclosure of UNE-P carriers' opportunity to provide xDSL service requires that its 271 application for Texas be denied.

III. SBC HAS REFUSED TO PROVIDE NONDISCRIMINATORY ACCESS TO UNE-P LOOPS FOR THE PURPOSE OF PROVIDING XDSL SERVICE.

20. AT&T has requested that SBC provide it access to the loop functionalities and operational procedures that are necessary to permit AT&T to provide advanced services in the high-frequency spectrum ("HFS") of the local loops that AT&T already leases from SBC to provide voice services to retail customers through the UNE-P architecture. AT&T seeks this capability regardless of whether it deploys its own assets (digital subscriber line access multiplexers ("DSLAMs") and packet switches) to provide the advanced service or works with a cooperating carrier to provide such services. In either instance, AT&T is only seeking access to the same technical functionalities and operational procedures utilized when an ILEC provides both voice and advanced services itself, shares the loop with an "advanced services affiliate," or shares the loop with a DLEC.

21. As noted below, there are no technical or operational impediments that preclude a UNE-P CLEC from utilizing its unbundled loop to provide both voice and advanced services in a prompt, efficient, and non-disruptive manner. Yet SBC has made no discernible progress in implementing operations support systems that will enable UNE-P CLECs to add advanced service capabilities to the loops they purchase as part of UNE-P. Thus, SBC is discriminating against the most competitively significant method of entry to the mass market. SBC cannot be granted authority to provide long distance service until it addresses this critical issue.

A. SBC Has Been Intransigent in Negotiations.

22. AT&T's initial submission demonstrated that SBC was violating its nondiscrimination obligations by refusing to implement measures that would enable AT&T, either by itself or in conjunction with a cooperating carrier, to provide competitive voice and advanced services over a single line. Initial Pfau/Chambers Decl. ¶¶ 29-30, 36-40. As explained in that filing, SBC's tactics work as follows. On the one hand, when a customer who receives

combined voice and advanced services over a single loop from the ILEC switches to AT&T's UNE-P-based voice service, SBC threatens to terminate its advanced service, unless the customer drops AT&T's voice service and switches back to SBC. *Id.* ¶¶ 29-30. On the other hand, when AT&T seeks to add advanced service capability to its customer's UNE-P-based voice service, SBC refuses to allow it do so in a nondiscriminatory manner. *Id.* ¶¶ 36-40.

23. In response, SBC flatly denied the existence of the problem that AT&T had described -- and documented. To assure the Commission that there was no problem, SBC proclaimed "*AT&T is free to offer both voice and data service over the UNE Platform or other UNE arrangements, whether by itself or in conjunction with its xDSL partner, I[P] Communications.*" SBC Reply Brief at 37 n.19 (emphasis added). Reinforcing that particular statement was another of equal import. While attempting to explain away its poor provisioning of the loops needed by data-only CLECs, SBC sought to blame the problem on those carriers' decisions to concentrate exclusively on the data market. Moreover, SBC added, "[i]f CLECs chose to offer voice services, they could share the voice line *in precisely the same way as SBC.*" *Id.* at 25 n.11 (emphasis added). These statements were breakthrough concessions and, if SBC had kept its word, this problem might be well on the way to a solution. In fact, however, outside of Commission proceedings, SBC has disavowed these very statements, and has continued to stonewall.

24. Specifically, within days of representing to this Commission that AT&T and other CLECs wishing to provide both voice and data could use the loop "in precisely the same way as SBC," SBC representatives repudiated that statement back in Texas. During negotiations for a replacement Texas Interconnection Agreement, SBC representatives in Texas adamantly refused to consider proposals by AT&T to permit it to provide voice and advanced services via unbundled network elements obtained from SBC.¹⁷ During those negotiations, when AT&T representatives read to SBC representatives the relevant statements from SBC's reply comments

¹⁷ See Letter from James L. Casserly, counsel for AT&T Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (Mar. 3, 2000).

(recited above), the SBC representatives claimed that SBC did not make those statements and that those statements did not accurately reflect SBC's position.¹⁸

25. In a semi-annual review of xDSL performance metrics held at the TPUC on April 13, SBC reiterated its unwillingness to discuss how AT&T could achieve the efficiencies that it had previously represented to this Commission that "AT&T is free" to enjoy.¹⁹

B. SBC Has Been Intransigent in Regional Fora.

26. Similarly, AT&T has also participated in multiple region-wide line-sharing trial meetings and conference calls with SBC in which AT&T asked SBC to accommodate its need for support to add xDSL to UNE-P loops. Contrary to SBC's representations, see Cruz Supp. Aff. ¶¶ 11-12, there has been little, if anything, that has been "collaborative" about the process SBC has implemented to run its line sharing trial, nor has AT&T's participation been "passive" as suggested by Mr. Cruz. See Cruz Supp. Aff. ¶ 7.²⁰

27. SBC has also rejected several requests by a group of data and voice CLECs (including AT&T) that SBC provide the support necessary to accommodate the addition of advanced service to a UNE-P configuration. By refusing to address this issue, SBC has violated its obligation, under the SBC/Ameritech Merger Conditions,²¹ to work collaboratively with CLECs to develop an advanced services OSS plan of record ("POR"). Accordingly, on March 31, 2000, a broad cross-section of data and voice CLECs jointly filed a notification with the Commission that SBC had not fully met its obligations during the POR process.²²

¹⁸ Although the SBC representatives privately disavowed to AT&T SBC's statements to this Commission, SBC apparently did not correct the record in connection with the Texas application.

¹⁹ Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas, Project No. 20400 and Implementation of Docket Numbers 20226 and 20272, Project No. 22165, Transcript of Proceedings before the Public Utilities Commission of Texas at 155 (Apr. 13, 2000) ("4/13/2000 TPUC Workshop"), attached hereto as Attachment 3.

²⁰ Although AT&T has diligently pursued means to offer xDSL services in conjunction with UNE-P voice service, AT&T's conduct is not the issue. The Commission must find that SBC has complied with all of its checklist obligations even if no carrier has submitted evidence to the contrary. BA-NY Order ¶ 47.

²¹ SBC/Ameritech Merger Order, Attachment C, ¶ 15c(2).

²² See Notification of Final Status of Advanced Services OSS Plan of Record, CC Docket No. 98-141 at 18-19 (Mar. 31, 2000) ("CLEC Report on Advanced Services OSS Plan of Record").

28. In sum, despite its express representation to the Commission in its reply brief on the prior application, SBC has been unwilling to engage in any meaningful negotiations regarding AT&T's access to the full capabilities of a UNE-P loop. SBC has made it abundantly clear that it will *not* provide the support necessary to permit nondiscriminatory access to the full capabilities of the loop in order to enable AT&T to provide xDSL service in conjunction with voice service. As a result, SBC has not presented AT&T any reasonable opportunity to combine xDSL and voice service over AT&T's UNE-P loop in a prompt, efficient, and non-disruptive manner.

C. SBC's Requirement that AT&T Abandon the Installed UNE-P Loop and Purchase a Second Loop Is Discriminatory.

29. Despite SBC's prior representation that CLECs can provide voice and data service in "precisely the same way" as SBC, it has indicated elsewhere that CLECs may not offer combined voice and data services over UNE-P loops unless they are willing to endure costly, time-consuming procedures that inconvenience customers and interfere with the CLECs' ability to provide prompt and reliable service.²³

30. Under SBC's proposal, AT&T (or its cooperating data carrier) would be required to purchase a new loop in addition to the working loop that was already in use to serve the customer. This new loop would be terminated in the CLEC collocation area where the advanced services equipment (e.g., DSLAMs, packet switches) is located. AT&T would be billed non-recurring charges to perform this new termination. SBC would then require AT&T to submit a second order (and pay more non-recurring charges) to establish a connection from the CLEC collocation area to SBC's switch port.

31. As if the preceding requirements were not sufficiently onerous to thwart competition, SBC's approach also entails additional impediments to competition. For a customer to utilize the same line for both voice and data, the customer's inside wire must obviously be

²³ Reply of SBC Communications, Inc., CC Docket No. 98-147 ("SBC Line Sharing Reply Comments"), at 2, 3 & n.5 (Apr. 5, 2000).

connected to that line. Because the SBC methodology requires the deployment of a second line to replace the line currently operating, a premises visit would be necessary to disconnect the inside wire from the "old" line and attach it to the "new" line. Not only does this procedure necessarily result in the customer being out of service but it must be carefully coordinated with the transfer of the telephone number. Finally, the CLEC would be required to place a third order to disconnect the previously used loop.

32. This process would require AT&T and other CLECs to incur greater costs, delays, and inefficiencies than SBC (and its data affiliate) incur to provide both voice and advanced services to their customers over a single line. By subjecting AT&T's and other CLECs' UNE-P customers to an unnecessary cutover to a second loop, SBC is saddling them with more complication and expense than ILECs and their voice customers will experience when adding advanced services to a voice line.²⁴ This approach is not nearly as efficient or cost-effective as the process SBC uses for itself or with its affiliates, and it does not allow CLECs to provide both voice and data over the same loop in "precisely the same way" as SBC, which is what nondiscriminatory provisions of the 1996 Act require, and what SBC previously represented to this Commission. Rather, SBC is effectively foreclosing the use of the UNE-P architecture as a market entry mechanism for any carrier who seeks to compete with SBC's package of voice and advanced services.

33. Critically, SBC's own statements acknowledge that its refusal to permit AT&T to add xDSL capabilities over the existing UNE-P loop is a prescription for non-parity treatment. Indeed, in the revised application, SBC once again seeks to explain away performance data showing poor treatment of (data-only) xDSL competitors. SBC claims that the performance data are "systematically skewed" because of the delays CLECs encounter in adding a second line, stating that this would be "ameliorated" when line sharing becomes available.²⁵ To the same

²⁴ In this regard, SBC's proposal is disturbingly reminiscent of earlier ILEC claims that collocation and a "hot cut" would be required for CLECs to use both the ILECs' loop and switching elements. This Commission expressed great skepticism regarding the lawfulness and feasibility of such proposals. See Louisiana II Order ¶ 197.

²⁵ SBC Letter Br. at 12.

effect, William R. Dysart, one of SBC's affiants in this proceeding, explained during a recent hearing in Texas, that "with line sharing, you don't have near the facility problems and lack of facilities as you do if you have to order a new loop. I mean, I don't think anybody will argue that."²⁶ Yet ordering a new loop -- rather than making efficient use of the existing loop -- is precisely the arrangement SBC proposes to force on AT&T.

34. Similarly, the supplemental joint affidavit of Chapman and Dysart notes that SBC was out of parity for a number of performance metrics related to xDSL provisioning and that a root-cause analysis revealed that, in 60% of cases, the cause of this lack of parity was "lack of facilities," *i.e.*, there was no working loop readily available. Chapman/Dysart Supplemental Aff.

¶ 35. They further explained:

SWBT has a limited number of existing, working facilities available in any particular geographic area between the customers' premises and the central office. xDSL services offered in conjunction with line sharing are generally not dependent upon the availability of spare facilities. However, CLEC requests for stand-alone xDSL-capable loops are absolutely dependent on spare facilities being available. Because of this dependency, where there are no facilities available to provision the xDSL-capable loops, SWBT's ability to complete the CLECs' orders by the requested due date is directly impacted. SWBT believes that this situation will be greatly alleviated when line sharing becomes available to the CLECs, because their customers will have the same opportunity to line share that is currently available to SWBT's retail customers. Chapman/Dysart Supplemental Aff. ¶ 36.

* * *

As noted above, "lack of facilities" also is used to describe a situation where the loop that has been assigned is faulty or in need of repair, such that SWBT must either reassign the circuit or repair the loop before the CLEC's order for the xDSL-capable loop can be completed. This can cause[] provisioning delays that result in missed due dates that will not occur when ADSL is provisioned over working loops. That is because, when ADSL is provisioned over a working loop, the continuity and use of the loop are already established. Id. ¶ 38.

35. By requiring AT&T to buy a second loop, rather than enabling it to add xDSL capability to the existing, working UNE-P loop, SBC is subjecting AT&T to the same "lack of facilities" problem that SBC affirmatively asserts is the root cause for the vast majority of its

²⁶ 4/13/2000 TPUC Workshop at 347, attached hereto as Attachment 3.

missed due dates and other provisioning problems. If a second loop is not available due to "lack of facilities," AT&T's ability to compete is -- in SBC's own words -- "directly impacted." Moreover, even if implementation of the Line Sharing Order will "greatly alleviate" this problem for data-only CLECs ("because [CLEC] customers will have the same opportunity to line share that is currently available to SWBT's retail customers"), this problem will continue unabated for AT&T's voice customers.

36. In short, under SBC's current scenario, SBC and its "separate affiliate" will be assured of a working, functioning loop; data CLECs who take advantage of line sharing will be assured of a working, functioning loop; but CLECs who provide voice service over UNE-P will have their working, functioning loop taken away and will have to keep their fingers crossed that another working loop will be found. And even if another loop is found, SBC will impose a service-disrupting and expensive process -- that ultimately will leave the customer with a single line. A clearer case of discriminatory treatment hardly can be imagined.

D. SBC's Supplemental Filing Confirms that SBC Has No Intention of Meeting its Statutory Obligations.

37. SBC's supplemental filing confirms that it has no intention of providing nondiscriminatory access to the processes and procedures required to permit UNE-P voice providers efficiently to add xDSL capabilities to the UNE-P loop. An amendment to the T2A submitted as part of SBC's application provides at section 4.7.4 that the High Frequency Portion of the Loop ("HFPL") "is not available in conjunction with a combination of network elements known as the platform or UNE-P (including loop and switch port combinations) or unbundled local switching or any arrangement where SWBT is not the retail POTS provider."²⁷ Thus, it could not be clearer that SBC is refusing to provide UNE-P CLECs nondiscriminatory access to

²⁷ See Initial Auinbau Aff., Appendix A-3, Volume 1, Attachment O. The amendment defines HFPL as "the frequency above the voice band on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voice band transmissions. The [Line Sharing Order] references the voice band frequency of the spectrum as 300 to 3000 Hertz (and possibly up to 3400 Hertz) and provides that DSL technologies which operate at frequencies generally above 20,000 Hertz will not interfere with voice band transmission. SWBT shall only make the HFPL available to CLEC in those instances where SWBT also is providing retail POTS (voice band circuit switched) service on the same local loop facility to the same end user." T2A, Section 2.6

all of the features, functions and capabilities of the unbundled loop. Ironically, SBC nevertheless requires such CLECs to pay for the full spectrum of the loop.

38. SBC premises this refusal on a continued misreading of the Commission's Line Sharing Order. Contrary to SBC's claims, the Line Sharing Order does not support SBC's position that it can deny UNE-P CLECs the ability to add xDSL service over the UNE-P loop. SBC claims that the language of that Order relieves it of any obligation to provide methods and procedures that allow a UNE-P CLEC to provide voice and data service over the customer's existing loop in the same way the SBC combines voice and data over the same single loop, either with its affiliate or with a data CLEC. AT&T strongly disagrees with that interpretation. More fundamentally, however, the language SBC cites is addressed to line sharing by a carrier that wishes to access only a *portion* of the loop, not the ability of a single CLEC to use the loop to provide both voice and data service itself (or with a cooperating carrier). AT&T is not seeking only a portion of the loop -- it has already purchased the entire loop. It merely seeks to ensure that SBC complies with its legal duty to provide AT&T all the capabilities and functions of the loop. Thus, SBC's protest that AT&T cannot, in the context of UNE-P, have the unbundled network element that SBC calls "High Frequency Portion of the Loop" is simply irrelevant.

39. Although the Line Sharing Order clearly represents an effort to enhance competition by CLECs who choose not to offer voice services, that order cannot be construed to unlawfully and illogically deny "shared line" efficiencies to CLECs who want to provide their customers both voice and advanced services. To the contrary, the Commission explicitly recognized that competitive carriers are *entitled* to "obtain combinations of network elements and use those elements to provide circuit switched voice service as well as data services."²⁸ The Commission has also repeatedly emphasized that an unbundled network element includes all of the features, functions and capabilities of that UNE.²⁹ It has, for example, found that the failure

²⁸ Line Sharing Order ¶ 47; *id.* at n.163 (endorsing line-sharing arrangements between voice CLECs and DLECs).

²⁹ 47 C.F.R. § 51.307(c); Local Competition Order ¶¶ 258, 262; Universal Service Order ¶ 157; UNE Remand Order ¶ 167; *see also* 47 U.S.C. § 153(29).

to provide all of the features, functions and capabilities of the switch violates the competitive checklist.³⁰ Yet SBC appears to contend that, when AT&T buys the loop in combination with the switch and other UNEs, AT&T has purchased *only* the voice band of that loop. If AT&T wants both the voice band and the high-frequency spectrum used for xDSL services, AT&T is required by SBC's proposal described above to *abandon* the existing UNE-P loop and purchase another loop. There can be no possible basis in law for such an outcome.

40. Further, SBC will not deploy a splitter on any loops that support another carrier's voice service via UNE-P or any other UNE arrangement. T2A, Section 4.7.5. SBC's refusal to deploy splitters on behalf of UNE-P CLECs is also discriminatory. First, the Commission's orders make clear that the ILECs' obligation to provide access to all of the functionalities and capabilities of the loop includes the obligation to provide the electronics attached to the loop, such as the line splitter.³¹

41. Second, having SBC furnish the line splitters is the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive to the retail customer.³² Indeed, if SBC does not provide the splitter, it is the CLEC, rather than SBC, who will be responsible for separating the voice and data signals on the loop. Moreover, when the Line Sharing Order was being debated, ILECs were adamant that they own the splitter because they were concerned about their loss of control over the voice service if the CLECs owned the splitter.³³ And when the ILEC owns the splitter and splitters are provisioned a line at a time (as SBC proposes), there is no disruption of voice service when the data service provider is changed.

³⁰ Louisiana II Order ¶ 210.

³¹ UNE Remand Order ¶ 175. A line splitter is a passive electronic device that does not require independent electric power and does not generate any heat load. It provides a line splitting and filtering function that bi-directionally separates the HFS signals (generally above 4000 Hertz) from low frequency (generally 300 to 3000 Hertz) voiceband analog signals from the copper loop between the customer's premises and the telephone company central office. See also Cruz Supp. Aff., Attachment C-2 ¶ 2.8.

³² The SBC/Ameritech Merger Order expressly forbids SBC from transferring voice-data splitters from its ILECs to its separate affiliate. SBC/Ameritech Merger Order ¶ 365 n.682. Such devices, like the loop itself, are used only in part for advanced services and are integral parts of the voice circuit.

³³ Line Sharing Order ¶ 76.

42. Third, having “voluntarily” agreed to provide the requested line splitter functionality to a data CLEC when that CLEC engages in line sharing with SBC voice services, SBC cannot credibly claim that it is nondiscriminatory for it to refuse UNE-P CLECs the same option.³⁴ SBC’s willingness to own and insert the splitter into a loop actively carrying SBC’s own voice service, especially when combined with the fact that SBC aggressively argued to the Commission that it should retain *exclusive* ownership of the splitter for quality of service reasons,³⁵ demonstrates that such arrangements are technically feasible. Moreover, they clearly show that SBC’s refusal to provide UNE-P CLECs with the same line-splitting function is discriminatory and an arbitrary “policy” decision designed to place AT&T and other UNE-P CLECs at an unfair competitive disadvantage.

E. There Is No Technical Justification for SBC’s Refusal to Provide the Loop Functionalities that Are Necessary to Allow UNE-P CLECs to Provide Voice and Advanced Services Over a Single Loop.

43. Just as there is no legal basis to refuse to enable AT&T to add xDSL to the UNE-P loop, there is no technical justification for SBC’s refusal. SBC can enable a UNE-P carrier to provide both voice and advanced services over the same loop by employing virtually the same procedures it uses when line-sharing with its “separate affiliate” (or, later, with data-only CLECs). There are no technical, operational, or other impediments that prevent SBC from supporting a CLEC’s efforts to add xDSL to a UNE-P loop, provided that the CLEC (or its cooperating carrier) has collocated the necessary advanced services equipment in the central office. As noted in our initial declaration, AT&T’s experience in Texas (where a customer temporarily received both AT&T UNE-P voice service and SBC ADSL service) demonstrates that is technically feasible to provide advanced services in the HFS of a UNE-P loop. Initial Pfau/Chambers Decl. ¶¶ 29-30.

44. The Cruz supplemental affidavit further demonstrates that SBC can provide the necessary functionalities, capabilities, and support to enable UNE-P CLECs to offer both voice

³⁴ As noted above, AT&T disagrees that such support is “voluntary.”

³⁵ SBC Line Sharing Reply Comments at 27.

and advanced services over the same loop using the same network configuration that SBC intends to use to provide voice services in conjunction with other CLECs' data services. For example, SBC proposes the same network configuration for ILEC-CLEC line sharing that AT&T seeks in adding xDSL service for its UNE-P voice customers. See Cruz Supp. Aff., Attachment B, Figs. 2, 4. Those proposed network configurations demonstrate that, from a technical perspective, there are no physical differences between an ILEC-provided "line sharing" arrangement using an ILEC-provided line splitter and combined voice and data service over a UNE-P loop utilizing an ILEC-provided line splitter. Regardless of who provides the voice service, the equipment required and the connection procedure to provide advanced services are the same.

45. Moreover, the same administrative requirements apply to xDSL-plus-UNE-P voice service as to line sharing. In both cases, there is an equal need for pre-ordering (the loop must be qualified in each case), ordering (an authorized carrier must add data service to an existing line), service provisioning (the same equipment elements must be interconnected), repair and maintenance (multi-carrier coordination of trouble resolution is required), security measures (to allow service additions/changes only by authorized carriers), and spectrum management (to minimize inter-service interference in the distribution plant) functions. Furthermore, the testing, repair and maintenance functions necessary to support line sharing for data CLECs are indistinguishable from the support necessary when advanced service is provided over a UNE-P loop owned by AT&T.

46. The Cruz supplemental affidavit provides no evidence of operational difficulties that would prevent SBC from providing UNE-P CLECs the necessary functions to support self-provisioning (or partnering with cooperating carriers to provide) both voice and advanced services over a single loop. Indeed, such a showing is not possible, because AT&T only seeks those functionalities and support services that must be provided when data CLECs share lines with SBC's voice service. Whether cooperating with a UNE-P CLEC or line sharing with the

ILEC, the data CLEC could utilize virtually the same ILEC methods and procedures to pre-qualify, qualify, and install the xDSL service on the loop.³⁶

47. The Commission should require SBC to demonstrate that it has fully implemented effective and nondiscriminatory procedures to permit competitors such as AT&T to provide an integrated bundle of voice and advanced services, either alone or with a cooperating carrier, without disruption and without foregoing the competition-enhancing benefits of UNE-P. This means, at a minimum, that SBC must be required to provide workable and proven operational support for carriers such as AT&T that seek to provide advanced service capabilities in conjunction with the UNE Platform.

IV. SBC'S REFUSAL TO PERMIT UNE-P CLECS TO COMBINE VOICE AND DATA SERVICES WILL HAVE SERIOUS ANTICOMPETITIVE CONSEQUENCES.

48. By denying CLECs the ability to combine voice and data services over UNE-P loops, SBC is positioning itself as the only carrier that can provide one-stop shopping to the mass market, particularly residential consumers. SBC's announced strategy to become the sole provider of a full bundle of voice, data, and long distance services has two key elements. The first, discussed in the preceding section, is to use its monopoly power to hinder the provision of xDSL service by would-be competitors. The second is to use its monopoly position to accelerate its own success in the xDSL market -- a process that is well underway through SBC's aptly named Project Pronto. As explained below, the Commission has previously recognized the danger of permitting BOCs to provide bundles of services where the BOC has not opened its market to competition.

³⁶ Minor differences in billing arrangements are a matter of form rather than substance. SBC itself concedes that the billing modifications necessary to support access to the high frequency spectrum portion of the loop are minimal. Cruz Supp. Aff. ¶ 55.

A. The Commission Has Previously Found that BOCs Cannot Be Permitted to Be the Only Source of One-Stop Shopping.

49. When the 1996 Act is properly implemented, one of the greatest benefits that will result will be the opportunity for consumers to choose among multiple suppliers that each offer an array of services. One of the virtues of the pre-divestiture telecommunications environment was that it afforded consumers the convenience of obtaining multiple services from a single supplier, but that environment was fatally flawed because it lacked the benefits of competition. Over the years since divestiture, consumers have reaped the substantial benefits of competition in long distance, customer-premises equipment, and enhanced services, but they have generally lacked the convenience of one-stop shopping. Full implementation of the 1996 Act holds the promise of combining the best of both worlds: convenience and competition.

50. To achieve these benefits, it is essential that SBC and the other regional Bell companies be compelled to fulfill their local market-opening responsibilities before they are permitted to offer long distance services. Until the local market is fully open, no one but the incumbent LEC can offer a full array of services. As the local market is opened in a particular area, and CLECs have a meaningful opportunity to offer consumers a complete "bundle" of services, then SBC and the other Bell companies may in turn secure approval to supplement their service "bundle" with long distance.

51. This sequencing is a vital element of the statutory scheme. Indeed, this is the very reason why the Commission was so decisive in preventing Ameritech and U S West from jumping the gun through their "joint marketing" arrangement with Qwest.³⁷ The Commission there found that the ability of U S West and Ameritech to offer the benefits of one-stop shopping before they had opened their local markets to competition was the centerpiece of their unlawful scheme.³⁸ Indeed, the Commission specifically recognized that the BOCs' ability to "be the sole provider of a package of services" conferred "an enormous benefit in strengthening their position

³⁷ See AT&T Corp. v. Ameritech Corp., 13 FCC Rcd 21438 (Sept. 28, 1998) ("Qwest Order"), aff'd sub nom. U S West Comm., Inc. v. FCC, 177 F.3d 1057 (D.C. Cir. 1999) ("Qwest Appeal Order"), cert. denied, 120 S.Ct. 1240 (2000).

³⁸ See Qwest Order ¶ 39.

in the telecommunications marketplace.”³⁹ Further, it found that the ability to provide a full package of services in advance of their competitors created a “first mover’s advantage” that permitted BOCs to build an entrenched full-service customer base before the major IXCs could offer a comparable package of services.⁴⁰

52. The Commission’s successful defense of its order in the Court of Appeals centered on these very points. In support of its conclusion that Ameritech and U S West were providing in-region, interLATA service without authorization in violation of Section 271, the Commission explained the fundamental problem with any incumbent providing bundled services before its local market is opened:

The BOCs’ programs enabled them to retain existing customers previously lost to other competitors – by virtue of the fact that they were the *only source for one-stop shopping* of local service, intraLATA toll services, and interLATA services.⁴¹

The Court of Appeals saw it the same way: “If the BOCs could secure this advantage without opening their local service markets, the blunting of the intended incentive would be considerable.”⁴²

53. SBC is now seeking to gain the same kind of decisive -- and unlawful -- advantage the Commission emphatically rejected in the Owest Order. SBC has made a concerted effort to become the only carrier in Texas with the ability offer a bundle of voice and data services which, with the success of its Section 271 application, would be combined with long distance services. A competitive marketplace, however, cannot survive if only a single carrier is capable of providing consumers with a full package of local, long distance, and xDSL services. Divesting incumbents of such overwhelming market power is precisely what Congress intended to do by prohibiting BOCs from entering the in-region, interLATA market immediately and, instead, establishing a checklist of market-opening criteria and other requirements that a BOC

³⁹ Owest Order ¶ 40.

⁴⁰ See id.

⁴¹ U S West Communications, Inc. v. Federal Communications Commission, D.C. Cir. No. 98-1468 Brief for Respondents at 56-57 (emphasis added).

⁴² Owest Appeal Order, 177 F.3d at 1060.

must satisfy before it may provide long distance service. Thus, to permit SBC to achieve its stated objective of becoming the “only” carrier to be able to offer “all the pieces”⁴³ would imperil the objectives of the 1996 Act and fly in the face of the Commission’s own precedent.

B. SBC’s Project Pronto Is Achieving Rapid Marketplace Success.

54. To achieve SBC’s goal of becoming the only carrier able to provide a full bundle of services, SBC is rolling out xDSL service under the Project Pronto banner. In contrast to the delay, obstinacy, ineptitude, and inconsistencies that are the hallmarks of SBC’s dealings with its competitors, SBC is moving decisively and at breakneck speed to entrench a mass market, residential, xDSL base. In its comments on SBC’s first Texas 271 application, AT&T demonstrated that SBC’s \$6 billion Project Pronto initiative is designed to maintain its first-mover advantage and to further SBC’s well-documented efforts to smother competition.⁴⁴

55. At the time of SBC’s prior application, AT&T showed that SBC had acquired 169,000 data subscribers region-wide. In addition, SBC’s publicly stated plan was to make xDSL service available to over 61 million customers throughout its region by the end of 2002.⁴⁵ While SBC remains guarded concerning Texas-specific data, there are, nevertheless, additional indicia of SBC’s continued rapid roll-out its own xDSL service. If anything, the passage of three months has only made SBC even more determined to go full speed ahead – and more confident of its ability to do so.

56. Last month, SBC’s Chairman and Chief Executive Officer Edward Whitacre declared that “SBC is ramping on DSL big time.”⁴⁶ Although he would not disclose its precise subscriber levels, Whitacre insisted that SBC’s market penetration was vast: “whatever number

⁴³ SBC Pronto Press Release at 4.

⁴⁴ CC Docket 00-4, Comments of AT&T Corp. at 9-26.

⁴⁵ “SBC Reports Strong Revenue and Earning Growth for Fourth Quarter, Full-Year 1999,” at 3, SBC Investor Briefing (Jan. 25, 2000) (“SBC Investor Briefing”), attached to the Initial Pfau/Chambers Decl. (Exh. C), as Att. 3.

⁴⁶ Communications Daily, March 10, 2000, “RBOC Chiefs Stress Data Growth Potential, Wireless, DSL” (“3/10 Comm. Daily”), attached hereto as Attachment 4. A similar sentiment was shared by James D. Gallemore, executive vice president of strategic marketing for SBC: “We’re quickly creating a vast, sophisticated broadband network that’s unrivaled in terms of customer reach and access speeds.” SBC News Center, News Release, San Antonio, Texas, Feb. 14, 2000, “SBC Cuts Price of DSL Internet Service” (“SBC xDSL Press Release”), attached hereto as Attachment 5.

you think it is, it's a lot more than that."⁴⁷ To achieve its objective of ensuring that "only SBC will have all the pieces" needed to provide the range of services that consumers want and expect,⁴⁸ approval to offer long distance is the sole remaining piece of the puzzle SBC needs to obtain.⁴⁹

57. SBC's xDSL plans, in fact, are "ahead of schedule"⁵⁰ and current estimates are that its region-wide subscriber levels will reach 1 million by year-end.⁵¹ In February alone, SBC's subsidiaries launched xDSL service in approximately 50 new markets.⁵² SBC now says it is aiming to make xDSL service available to 77 million customers by year-end 2002.⁵³ And along with California, Texas is the main focus of SBC's current activity. In sharp contrast, SBC touts as proof of its "cooperation" with xDSL competitors in Texas that those carriers -- collectively, and after nearly two years of effort -- have a grand total of just over 5,000 advanced services loops.⁵⁴ And none of these customers are able to obtain both voice and data services from CLECs with the same convenience that SBC provides to itself.

58. SBC's xDSL head start is unparalleled. Credit Suisse indicates that "SBC has sold more DSL service than anyone else."⁵⁵ In fact, "SBC had 800 DSL sales representatives at YE99, 5,000 at February 2000 and expects 9,000 by April 2000. 13,000 by the end of 3Q00."⁵⁶ And compared to SBC's provision of 5,000 total lines to competitors in Texas, "SBC is currently adding close to 2,000 subscribers per day region-wide and expects to ramp to 4,500 per day in order to hit its YE00 target of 1M subscribers."⁵⁷

59. To be clear, AT&T has no objection to SBC's speedy deployment of advanced services to residential consumers. That is a goal shared by AT&T, the Commission, and

⁴⁷ 3/10 Comm. Daily at 8.

⁴⁸ SBC Pronto Press Release at 4.

⁴⁹ See *id.* at 3 (statement of James Gallemore).

⁵⁰ 3/10 Comm. Daily at 8.

⁵¹ *Id.*

⁵² SBC xDSL Press Release at 1.

⁵³ See Pronto Home Page.

⁵⁴ Chapman /Dysart Supp. Aff. ¶ 5.

⁵⁵ Credit Suisse First Boston, SBC Analyst Meeting (Mar. 1, 2000), attached hereto as Attachment 6.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 2.

Congress. The Act requires, and consumers demand, however, that competitors have the same opportunity to compete in these markets. That was the central point of Section 271, as clearly articulated in the Qwest Order. There, Qwest and the BOCs touted their enormous, rapid success in garnering new customers and the benefits one-stop shopping brought to those customers. But, just as the Commission found in the Qwest Order, the short-term benefits cannot outweigh the long-term anticompetitive consequences that inevitably result when only the incumbent, with all of its inherent advantages, is the only entity capable of providing one-stop shopping.

C. SBC's Planned Implementation of Project Pronto Architecture Precludes Effective Competitive Access.

60. SBC's obstructionism is not limited to the current operating environment in which SBC is preventing AT&T from connecting advanced service capabilities to its UNE-P loops in a prompt, efficient, and non-disruptive manner. In addition to offering SBC a way to rapidly entrench a customer base and obtain a first mover advantage, SBC intends to use the Project Pronto network architecture to erect new impediments to competitive entry. It is now evident that SBC intends to resist otherwise technically feasible and pro-competitive uses of its network as it substantially redesigns its network architecture.

61. The key feature of the Project Pronto architecture is a vastly expanded use of fiber facilities and remote terminals. Fiber optics will replace much of the copper in the loop feeder and distribution plant. Thus, copper local loops will no longer run from the customer's premises to the central office but to a remote terminal, typically located within 5,000 feet of the customer's home.

62. On its face, SBC's Project Pronto architecture has the potential to create an open, efficient, and forward-looking loop architecture that benefits consumers. By significantly decreasing the length of the copper loop plant serving a subscriber's home, this architecture will increase the total number of consumers who will be able to obtain xDSL services and the value and bandwidth of the services they can obtain. Currently, however, SBC intends to ensure that only its ILECs (together with their not-so-separate affiliates) have the opportunity to realize the

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March 3, 2000

PUBLIC VERSION

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte - CC Docket No. 00-4
In the Matter of Application of SBC Communications
Inc., Southwestern Bell Telephone Company, And
Southwestern Bell Communications Services, Inc.
d/b/a Southwestern Bell Long Distance for Provision
of In-Region, InterLATA Services in Texas

Dear Ms. Salas:

Our client, AT&T Corp. ("AT&T"), wishes to respond to several assertions made for the first time in SBC's reply comments regarding the offering by CLECs of voice and xDSL service over an unbundled loop obtained from SBC. These assertions, which bear on critical issues in this proceeding, are false and misleading, as demonstrated by other portions of SBC's reply as well as recent events in Texas. This letter also responds to new arguments presented by SBC regarding its "separate affiliate" and explains why SBC's reliance on the SBC/Ameritech merger conditions is irrelevant to a 271 application.

Combining xDSL with UNE-P

In its initial comments, AT&T demonstrated that SBC was violating its nondiscrimination obligations by refusing to implement measures that would enable AT&T, either by itself or in conjunction with another carrier, to provide voice and xDSL service over a single line. In its reply comments, SBC acknowledges, for the first time, that CLECs have a right to do just that. Specifically, in attempting to explain its dilatory provisioning of xDSL capable loops, SBC states (at 25 n.11) that, "if CLECs chose to offer voice services, they could share the voice line in precisely the same way as SBC." SBC then blames its deficient performance on CLECs, claiming (*id.*) that "they don't want to offer voice service; they just want to share SBC's voice channel."

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March 3, 2000

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SBC's statement that CLECs "don't want to offer" voice and data service is patently false. It is refuted not only by AT&T's comments and declarations, but elsewhere by SBC itself. Acknowledging the concerns raised by AT&T, and purporting to address them, SBC assures the Commission (at 37 n.19) that "AT&T is free to offer both voice and data service over the UNE-Platform or other UNE arrangements, whether by itself or in conjunction with an xDSL partner." To the contrary, although AT&T wishes -- and needs -- to "offer both voice and data services over the UNE Platform," SBC has made it impossible for AT&T to do so in an efficient, prompt, and non-disruptive manner. Thus, it is SBC's refusal to allow AT&T "to share the voice line in precisely the same way as SBC," and not CLEC business plans, that explains the absence of combined xDSL/voice competition in Texas today.

But SBC is not merely being intransigent; it is also misrepresenting its position to the Commission.¹ Specifically, as explained in the attached Declaration of Michelle Bourianoff,

AT&T's latest experiences in attempting to obtain nondiscriminatory access to provide xDSL service in Texas are disturbingly reminiscent of its experience in attempting to obtain nondiscriminatory access in order to provide competing voice service using UNE-P. SBC first interposes an array of legal objections (*e.g.*, objections to combining elements, resistance to TELRIC pricing), which delay and increase the costs of competitive entry. When those legal barriers are finally removed, SBC then raises successive layers of technical and operational barriers and objections.

At the same time, SBC has been accelerating its deployment of "Project Pronto," with the avowed objective of being the "only" carrier in Texas capable of offering voice and data service over the same line. The stonewalling of AT&T and other CLECs is just as much a part of SBC's strategy as is its own deployment. See Pfau/Chambers Decl. at ¶¶ 6-61. The record is clear that

¹ Sad to say, such conduct is not aberrational for SBC. Just as it previously represented to Congress that it could lawfully transfer from the courts to the Commission the prohibition on RBOC provision of interLATA service, only to later pursue a lawsuit challenging the constitutionality of that very action, SBC is representing one thing to the Commission about xDSL, while telling CLECs exactly the opposite.